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IN THE  
**SUPREME COURT**  
OF THE  
**UNITED STATES**

OCTOBER TERM, 1972

No. 72-493

JOHN W. VLANDIS, Director of Admissions,  
The University of Connecticut,  
*Appellant,*

v.

MARGARET MARSH KLINE AND PATRICIA CATAPANO,  
*Respondents.*

ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT  
OF CONNECTICUT

BRIEF OF AMICUS CURIAE  
State of Washington

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## INDEX

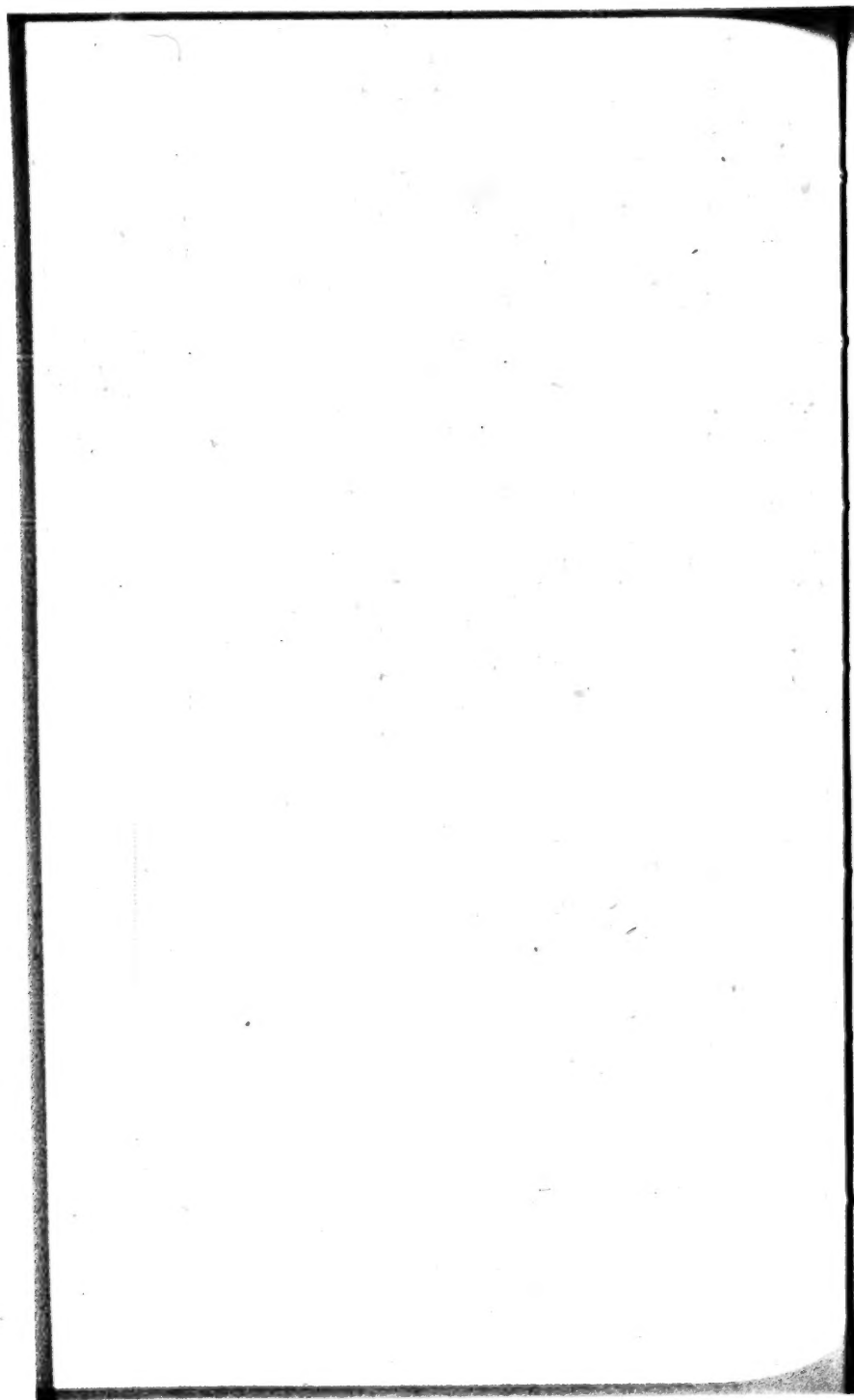
	Page
Interest of Amicus Curiae.....	1
Argument .....	4
Conclusion .....	9

## TABLE OF CITATIONS CASES

Bryan v. Regents of the University of California, 188 Cal. 559, 205 Pac. 1071 (1922).....	4
Clarke v. Redeker, 259 F. Supp. 117 (S.D. Iowa, 1966)....	4
Covell v. Douglas, ..... Colo. .... 501 P.2d 1047 (1972) ..	7
Johns v. Redeker, 406 F.2d 878 (8 Cir. 1969) .....	4
Kirk v. Board of Regents of University of California, 273 Cal. App. 2d 430, 78 Cal. Rptr. 260 (1969), dismissed on appeal, 396 U.S. 554 (1970).....	4, 5
Landwehr v. Regents of Colorado, 156 Colo. 1, 396 P.2d 451 (1964) .....	4
Robertson v. Regents of the University of New Mexico, No. 9515, ..... F. Supp. .... (August 3, 1972).....	7
Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) .....	5
Starns v. Malkerson, 326 F. Supp. 234 (D. Minn. 1970) A'ffd without opinion 401 U.S. 985, 28 L. Ed. 527, 91 S. Ct. 1231 (1971).....	3, 4, 5, 6, 7, 9
Sturgis et al. v. State of Washington, University of Washington, et al., Civil Action No. 614-72C2.....	2
Thompson v. Board of Regents of University of Nebraska, 187 Neb. 252, 188 N.W.2d 840 (1971).....	4, 6

## CONSTITUTIONAL PROVISIONS AND STATUTES

Chapter 28B.15 RCW, last amended by Chapter 149, Laws of 1972, 1st ex. sess.....	1
Conn. Gen. Stats. § 10-329(b) as amended by Public Act No. 5 § 126(a) (5), (June Session, 1971) .....	6
RCW 28B.15.012 .....	2
United States Constitution, Fourteenth Amendment.....	7



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**INTEREST OF AMICUS CURIAE**

As is true in most states, the legislature of the State of Washington has enacted a law establishing the state residency or non-residency of students as a basis for determining tuition charges for students enrolling at state institutions of higher education. Specifically, as set forth in Chapter 28B.15 RCW, last amended by Chapter 149, Laws of 1972, 1st ex. sess., the law requires such institutions to charge higher tuition rates to non-resident students. In determining who qualifies as a resident student for

purposes of determining tuition, the law provides in RCW 28B.15.012 that:

“(2) The term ‘resident student’ shall mean a student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which he has registered at any institution and has in fact established a bona fide domicile in this state for other than educational purposes: Provided, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for educational purposes only, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that he has in fact established a bona fide domicile in this state for other than educational purposes.” (Emphasis supplied.)

In September, 1972, an action was filed against the State of Washington and its University of Washington, *inter alia*, in the United States District Court for the Western District of Washington by non-resident students at the University of Washington (*Sturgis et al. v. State of Washington, University of Washington, et al.*, Civil Action No. 614-72C2) seeking to have this non-resident tuition law declared unconstitutional and enjoining the defendants from implementing and enforcing any of its provisions. The plaintiffs are contending that the law not only violates their constitutional rights to travel, due process, and equal protection of the laws, but that the durational one-year residency require-



ment for establishing domicile violates the United States Constitution by creating a distinction between state residents which is arbitrary and for which there is no compelling state interest.

An order has been entered in *Sturgis* convening a three-judge court but hearing has apparently been delayed by that court pending a decision in this matter by this Court.

Thus, the interest of the State of Washington in submitting this brief as *amicus curiae* is clear in that the disposition of the instant case by this Court may well affect the disposition of *Sturgis* by the United States District Court, thereby directly affecting the interests of the State of Washington.

While the State of Washington, in submitting this brief, urges the Court in the instant case to uphold the constitutionality of the Connecticut statute which requires a higher tuition fee for non-resident students than for students who are residents of that state, if this Court determines that the Connecticut statute is unconstitutional, then the State of Washington respectfully submits that such decision should be harmonized with this Court's previous decision in *Starns v. Malkerson*, 326 F. Supp. 234 (D. Minn. 1970), Aff'd without opinion 401 U.S. 985, 28 L. Ed. 527, 91 S. Ct. 1231 (1971). In *Starns* this Court affirmed the United States District Court decision upholding the constitutionality of a state university regulation establishing a one-year durational residency requirement for tuition purposes. *Amicus* contends that *Starns*, together with a long line of decisions by both federal and state courts regarding

similar state statutes or regulations, has established the constitutionality of durational (one year or less) residency requirements for tuition purposes and that, therefore, these previous rulings should be clearly distinguished from a ruling by this Court that the Connecticut statute, which bars a change from non-resident to resident status by a student enrolled at one of its institutions of higher education, is unconstitutional.

## ARGUMENT

### **I. Original Durational Residency Requirements for Purposes of Tuition are Constitutional.**

Both federal and state courts have consistently held that it is constitutionally permissible for states to distinguish between residents and non-residents when assessing tuition fees for their institutions of higher education. See *Starns v. Malkerson*, *supra*; *Johns v. Redeker*, 406 F.2d 878 (8 Cir. 1969); *Clarke v. Redeker*, 259 F. Supp. 117 (S.D. Iowa 1966); *Thompson v. Board of Regents of University of Nebraska*, 187 Neb. 252, 188 N.W.2d 840 (1971); *Kirk v. Board of Regents of University of California*, 273 Cal. App. 2d 430, 78 Cal. Rptr. 260 (1969), dismissed on appeal, 396 U.S. 554 (1970); *Landwehr v. Regents of Colorado*, 156 Colo. 1, 396 P.2d 451 (1964); *Bryan v. Regents of the University of California*, 188 Cal. 559, 205 Pac. 1071 (1922).

Furthermore, federal and state courts have sustained (one-year and less) durational residency requirements as a condition to qualification for lower resident tuition rates. See *Starns v. Malkerson*, *supra*; *Thompson v. Board of Regents of the University*

of *Nebraska, supra*; *Kirk v. Board of Regents of University of California, supra*.

It was thought that the United States Supreme Court case of *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), which struck down the one-year residency requirement for welfare recipients might foretell a similar result for non-resident tuition provisions. *Shapiro* held that the imposition of a residency requirement on welfare recipients constituted an infringement on a "fundamental interest" of the recipient, i.e., the right to travel, and could only be justified by a compelling state interest. Merely showing a "reasonable or rational basis" for the requirement was insufficient. However, the 1971 decision of *Starns v. Malkerson, supra*, which was affirmed by this Court, upheld a Minnesota state regulation which required one year's residency before qualifying as a resident for tuition purposes. In that case, Judge Lord, speaking for the three-judge court, stated:

"[W]e conclude that this is not a case of an infringement of a fundamental right and thus the exacting standards of the compelling state interest test have no application. Unlike *Shapiro*, we find the one-year durational residence requirement challenged here does not constitute a penalty upon the exercise of the constitutional right of interstate travel and thus the regulation's constitutionality should be tested under the traditional equal protection standards." (*Starns v. Malkerson*, p. 238)

In reaching its conclusion, the Court noted that the tuition residency requirements were not even in part designed to deter any appreciable numbers of

persons from moving into the state, and the operation of the requirement has no "chilling effect" on the assertion of the constitutional right to travel. Furthermore, the Court was unwilling to equate the value of attaining a higher education with the necessity of attaining food, clothing, and shelter for one's self and one's dependents.

Addressing itself to the contention that the one-year rule created an irrebuttable classification which was arbitrary and unreasonable, the Court held that since the classification was only for one year it was not permanent or arbitrary but, instead, created a rebuttable presumption that was related to a legitimate state objective—funding of financing, operating and maintaining the state's education institutions.

Subsequent to the *Starns* decision, a state statute establishing a similar requirement for a shorter period (four months) was upheld by the Supreme Court of the State of Nebraska, *Thompson v. Board of Regents of University of Nebraska, supra*.

## **II. The Connecticut Statute Distinguished**

In the instant case, the respondents were classified as "out-of-state students" under applicable provision of the Connecticut statute, Conn. Gen. Stats., § 10-329(b) as amended by Public Act No. 5, § 126 (June Session, 1971). Under the language of subsection (a) (5) of that statute, they were barred from obtaining any change in that status during the period of their attendance at the institution. Subsection (a) (5) provides:

"The status of a student, as established at the

time of his application for admission at a constituent unit of the state system of higher education under the provisions of this section, shall be his status for the entire period of his attendance at such constituent unit."

The State of Washington submits that the type of permanent classification or conclusive presumption found in the Connecticut statute is clearly distinguishable from such durational residency requirements as are found in *Starns v. Malkerson*, *supra*, and as are contained in the Washington statute set forth, *supra*, p. 2. The former clearly precludes any student from ever becoming a resident for tuition purposes once he has been classified as a non-resident, whereas the latter merely creates a one-year durational residency requirement which, as pointed out by the Court in *Starns*, is neither permanent nor arbitrary, and is tied to a legitimate state objective.

If this Court finds that subsection (a)(5) of the Connecticut statute is impermissibly arbitrary and thus violative of the fourteenth amendment's due process and equal protection clauses, *amicus* respectfully urges that the Court follow the examples of the three-judge New Mexico United States District Court in *Robertson v. Regents of the University of New Mexico*, No. 9515, ..... F. Supp. .... (August 3, 1972), and of the Supreme Court of the State of Colorado in *Covell v. Douglas*, ..... Colo. ...., 501 P.2d 1047 (1972). In both cases, the courts were considering the constitutionality of statutory provisions similar to subsection (a)(5) of the Connecticut statute. While both courts found the statutory provisions which effectively barred a

change from non-resident to resident status by students enrolled at affected state institutions constitutionally offensive, they limited their ruling to that precise question. The Colorado court expressly upheld the right of the state to differentiate between resident and non-resident students for tuition purposes, while the New Mexico court observed that "no issue has been raised herein with respect to either the power of the State of New Mexico to establish a one year durational residency requirement for payment of resident tuition or the power of the State of New Mexico to establish the age of majority, and no ruling is made thereon."

## CONCLUSION

In *Starns v. Malkerson, supra*, the United States District Court for the District of Minnesota determined that a state could constitutionally create a one-year durational residency classification for tuition purposes. Its decision was affirmed by this Court without opinion. Furthermore, decisions by both federal and state courts, decided both prior and subsequent to *Starns*, have upheld similar state requirements.

The State of Washington respectfully requests that if this Court determines that the Connecticut statute being challenged in the instant case is unconstitutional, it clearly distinguish its earlier ruling in *Starns* so as to preserve that ruling and the right of the states to create durational residency classifications for tuition purposes.

Respectfully submitted,

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